IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 910 of 1995

For Approval and Signature:

HONOURABLE MR.JUSTICE SHARAD D.DAVE

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJART - Appellant(s)
Versus
JITENDRA TULSIDAS & 2 - Opponent(s)

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Appearance :
Ms.Falguni Patel, APP for Appellant(s) : 1,
NOTICE SERVED for Opponent(s) : 1,
MR Haresh N.Joshi for M/S THAKKAR ASSOC. for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE SHARAD D.DAVE

Date : 16/01/2007

ORAL JUDGMENT

1. This is an appeal filed by the appellant State under Section 378 of the Code of Criminal Procedure, 1973 challenging the judgment and order

dated 7.4.1995 passed by the learned Judicial Magistrate, First Class, Khambaliya in Criminal Case No.271 of 1987, whereby the learned Judicial Magistrate, First Class, Khambaliya had acquitted the accused from the offence punishable under Sections 7 and 16 of the Prevention of Food Adulteration Act, 1954 (hereinafter referred to as `the Act') under Section 248(1) of Criminal Procedure Code.

2. The short facts giving rise to this appeal are such that :

The present complainant collected the sample of catechu used for the purpose of preparing pan from the shop of the partnership firm of the accused on 16.10.86 which was collected and stored by the accused for the purpose of sale and sent the sample for analysis and after receiving the report of the Public Analyst, it was found that the said lime was adulterated and was not found as per the standard laid down under the Act. Therefore, necessary sanction to prosecute the accused was obtained and complaint was filed against the accused.

3. After receiving the complaint, summons were issued to the accused, the charge was framed against all the accused and as all the accused pleaded not guilty and claimed to be tried, after recording the evidence and hearing the learned counsel for both the sides, learned Magistrate acquitted the accused from the offence punishable under Sections 7 and 16 of

the Act under Section 248(1) of Criminal Procedure Code against which the present appeal is filed.

4. Heard Ms.Falguni Patel, learned APP for the appellant – State and Mr.Haresh N.Joshi for M/s Thakkar Associates for the accused.

5. The judgment is challenged on various grounds mentioned in para 4 of the memo of appeal. Ms.Falguni Patel, learned APP has taken me through the relevant part of the judgment and oral as well as documentary evidence led during the course of trial.

6. On overall appreciation of evidence and considering the facts of the case, the trial Court has acquitted the accused from the charges levelled against them. The trial Court after considering Exh.113 came to the conclusion that there is no mention that Health Authority has gone through all the papers in which the sanction is sought to prosecute the accused. Further, it is also held by the learned trial Court that satisfaction is not arrived at by the authority while giving the sanction and, therefore, non-application of mind. The trial Court also came to the conclusion that whether it is edible catechu is not proved and therefore it cannot be believed that the sample of the accused was received by the Analyst and the same has been analyzed and under the said circumstances, the prosecution has failed to prove its case.

7. Having heard the learned counsel for the parties and having considered the finding recorded by the learned trial Judge, I am of the considered opinion that there is no infirmity in the reasons assigned by the learned Magistrate for acquitting the respondents/accused. Suffice it to say that the learned Magistrate has given cogent and convincing reasons for acquitting both the respondents/accused and the learned A.P.P., has failed to dislodge the reasons given by the learned Magistrate and convince this Court to take a view contrary to the one taken by the learned Magistrate. Therefore, there is no merit in the acquittal appeal, and the appeal deserves to be dismissed.

8. In view of the foregoing discussion, the following order is passed.

9. The appeal of the State is dismissed. The bail bond, if any, shall stand discharged.

(Sharad D.Dave,J)

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